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Crimes and Offenses SB 36

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CRIMES AND OFFENSES

Controlled Substances: Amend Chapter 13 of Title 16 and Chapter 4 of Title 26 of the Official Code of Georgia Annotated, Relating to Controlled Substances and Pharmacists and Pharmacies, Respectively, so as to Implement Various Measures Relating to the Regulation and Security of Prescribing and Dispensing Controlled Substances; Provide for the Establishment of a Program to Monitor the Prescribing and Dispensing of Schedule II, III, IV, and V Controlled Substances; Provide for Definitions; Require Dispensers to Submit Certain Information Regarding the Dispensing of Such Controlled Substances; Provide for the Confidentiality of Submitted Information Except under Certain Circumstances; Provide for the Establishment of an Electronic Database Review Advisory Committee; Provide for Its Membership, Duties, and Organization; Provide for the Establishment of Rules and Regulations; Provide for Limited Liability; Provide for Penalties; Require that Hard Copy Prescriptions for Schedule II Controlled Substances Be on Security Paper; Redefine the Term "Security Paper" and Provide for Approval of Such Paper Prior to Sale by the State Board of Pharmacy; Provide for Exceptions; Provide for Rules and Regulations; Require Identification from Persons Picking Up Certain Prescriptions; Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes.

CODE SECTIONS:	O.C.G.A. §§ 16-13-21 (amended), -57 (new), -58 (new), -59 (new), -60 (new), -61 (new), -62 (new), -63 (new), -64 (new), -65 (new); 26-4-5 (amended); 26-4-80.1 (new); 26-4-80.2 (new)
BILL NUMBER:	SB 36
ACT NUMBER:	229
GEORGIA LAWS:	2011 Ga. Laws 659
SUMMARY:	The Act authorizes the Georgia Drugs and Narcotics Agency to establish and maintain a program to record and monitor the prescription and dispensing

of Schedule II, III, IV, and V controlled substances. It provides for confidentiality of the submitted information and establishes penalties for the breach of these provisions. It also provides for the establishment of an Electronic Database Review Advisory Committee and for its membership. The Act requires that Schedule II written prescriptions be on security paper.

EFFECTIVE DATE: July 1, 2011

History

In recent years, Georgia has seen a dramatic increase in prescription drug addiction.[1] Bolstering this problem are "pill mills;" comprised of pharmacies, doctors, or clinics that prescribe or dispense painkillers inappropriately or for non-medical purposes, to addicts and drug dealers, sometimes without even examining the patient.[2] These facilities prey on addicts, often accepting only cash payments, refusing to take appointments, and failing to maintain medical records.[3] Georgia became a target for these rogue doctors, pharmacists, addicts, and drug dealers because it was one of only four states without legislation establishing a prescription drug monitoring program.[4] As a result, Georgia provided a safe harbor for

1. Senator Buddy Carter, the bill's sponsor, described the situation in Georgia as an "epidemic." Interview with Sen. Buddy Carter (R-1st) (Mar. 29, 2011) [hereinafter Carter Interview] (on file with the Georgia State University Law Review). "There were 584 prescription drug overdose deaths in Georgia in 2009, according to records from the GBI Medical Examiner's Office. By comparison, there were 86 deaths from illegal drug overdoses." April Hunt & Andria Simmons, *Trailing an Elusive Killer*, ATLANTA J.-CONST., May 7, 2011, at B2, *available at* http://www.ajc.com/news/georgia-politics-elections/trailing-an-elusive-killer-938655.html.

2. Greg Bluestein, *Feds in Ga. to Ramp up "Pill Mill" Investigations*, ASSOCIATED PRESS, Feb. 28, 2011, *available at* http://abcnews.go.com/Business/wireStory?id=13020612&page=1; Pia Malbran, *What's a Pill Mill?*, CBS NEWS, May 31, 2007, http://www.cbsnews.com/8301-501263_162-2872835-501263.html.

3. Bluestein, *supra* note 2.

4. As of spring 2011 Georgia, Maryland, Missouri, and New Hampshire all had prescription monitoring program legislation pending. Status of Prescription Drug Monitoring Programs (map), The Alliance of States with Prescription Monitoring Programs,

these activities since each bordering state had enacted prescription monitoring program legislation.[5] This failure to pass legislation was not due to a lack of trying; during the years preceding the passage of Senate Bill (SB) 36, various forms of prescription monitoring legislation were introduced in Georgia, but none were successful.[6] Much of the opposition to these proposals arose out of concern for patient privacy and funding.[7]

Because the majority of states have established prescription monitoring databases, Georgia had many models upon which to base its legislation. Many states include prescription monitoring for all Schedule II, III, IV, and V controlled substances, while some have limited the database to only Schedule II, III, or IV drugs.[8] At a minimum, all prescription monitoring programs include Schedule II drugs and some have included specific substances rather than an

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http://www.pmpalliance.org/pdf/pmpstatusmap2011.pdf (last visited June 12, 2011) [hereinafter Map of States with Prescription Monitoring Programs]. Eleven states plus Guam have enacted legislation, but their databases are not yet operational. *Id.* Thirty-five states have operational prescription drug monitoring programs. *Id.*

5. Video Recording of House Judiciary Non-Civil Committee Proceedings, Mar. 28, 2011 at 6 min., 10 sec. (remarks by Sen. Buddy Carter (R-1st)), http://media.legis.ga.gov/hav/11_12/2011/committees/judiNon/judiNon032811EDITED.wmv [hereinafter House Committee Video]; Map of States with Prescription Monitoring Programs, *supra* note 4.

6. *See* HB 455, as introduced, 2008 Ga. Gen. Assem.; HB 614, as introduced, 2009 Ga. Gen. Assem.; SB 418, as introduced, 2010 Ga. Gen. Assem.; HB 184, as introduced, 2010 Ga. Gen. Assem.

7. *Senators Reintroduce Prescription Drug Monitoring Act*, PEACHPUNDIT.COM, http://www.peachpundit.com/2010/03/11/senators-reintroduce-prescription-drug-monitoring-act/ (Mar. 11, 2010); *Database Would Track Prescriptions*, AUGUSTA CHRON., Feb. 18, 2011, at A11, *available at* http://chronicle.augusta.com/news/health/2011-02-18/database-would-track-prescriptions.

8. Controlled substances are divided into five schedules under 21 C.F.R. § 1308. Controlled Substance Schedules, http://www.deadiversion.usdoj.gov/schedules/index.html#define (last visited June 12, 2011). A controlled substance is assigned to a schedule based on its currently accepted medical use and its potential for abuse or addiction. *Id*. As the schedule numbers increase, generally the potential for abuse decreases. *Id*. For example, Schedule II controlled substances have a high potential for abuse, but have medically accepted uses, whereas Schedule V controlled substances have a low potential for abuse. *Id*. Schedule I controlled substances are not included in the Prescription Monitoring Database because they are substances with a very high potential for abuse and no medically accepted uses. *Id.* Connecticut, Massachusetts, New York, Delaware, Alaska, Colorado, Hawaii, Idaho, Utah, Washington, Illinois, Indiana, Michigan, North Dakota, Ohio, Alabama, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, Tennessee, and Texas monitor all Schedule II, III, IV, and V controlled substances. *See Drug Schedules Monitored*, ALLIANCE OF STATES WITH PRESCRIPTION MONITORING PROGRAMS, http://www.pmpalliance.org/content/drug-schedules-monitored (last visited June 12, 2011). Pennsylvania's prescription monitoring program includes only Schedule II controlled substances. *Id.* Maine, Vermont, Arizona, California, New Mexico, Nevada, Oregon, Wyoming, Iowa, Kansas, Minnesota, South Dakota, Florida, South Carolina, Virginia, and New Jersey collect data on all Schedule II, III, and IV drugs. *Id.*

entire schedule.[9] Additionally, the required frequency for updating prescription information in the database ranges from daily to bi-weekly to monthly.[10] The individuals and entities permitted to request patient prescription data also varies among the states.[11] Some states allow prescribers, pharmacists, pharmacies, law enforcement, licensing boards, and patients to request information, while other states limit these requests to law enforcement only.[12] The Alliance of States with Prescription Monitoring Programs offers model legislation on its website.[13]

The nationwide push to implement prescription monitoring programs has resulted in funding incentives provided by both the Federal government and private companies for states with programs.[14] Funding is available to plan for, implement, or enhance an existing prescription monitoring program.[15] Both the Department of Health and Human Services and the Department of Justice offer grant programs.[16] However, these programs only fund state prescription monitoring programs that comply with certain standards, such as including all Schedule II, III, IV, and V controlled

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9. Particularly, many states specifically include Carisoprodol, a muscle relaxant commonly known as SOMA, in the monitoring program. *See* Drug Schedules Monitored, *supra* note 8; J.A. Fass, *Carisprodol Legal Status and Patterns of Abuse*, 44 ANNALS OF PHARMACOTHERAPY 1962 (2010). Carisoprodol is not a controlled substance under federal law, but Georgia lists it as a Schedule IV controlled substance. *Compare* 21 C.F.R. § 1308.14 (2009) *with* GA. COMP R. & REGS. 480-34-.01 (1996).

10. *See PMP Data Collection Frequency*, ALLIANCE OF STATES WITH PRESCRIPTION MONITORING PROGRAMS, http://www.pmpalliance.org/content/pmp-data-collection-frequency (last visited June 12, 2011).

11. *See Who is Authorized to Request Patient Prescription Data?*, ALLIANCE OF STATES WITH PRESCRIPTION MONITORING PROGRAMS, http://www.pmpalliance.org/content/who-authorized-request-patient-prescription-data (last visited June 12, 2011).

12. Pennsylvania restricts patient prescription data requests to law enforcement only, while Massachusetts allows prescribers, pharmacists, pharmacies, law enforcement, and patients to request patient prescription information. *Id.*

13. *See Prescription Monitoring Program Model Act 2010 Revision*, ALLIANCE OF STATES WITH PRESCRIPTION MONITORING PROGRAMS, http://www.pmpalliance.org/pdf/PMPModelActFinal20100628.pdf (last visited June 12, 2011).

14. *See Funding*, ALLIANCE OF STATES WITH PRESCRIPTION MONITORING PROGRAMS, http://www.pmpalliance.org/content/funding (last visited June 12, 2011).

15. *Id.*

16. *See* Harold Rogers Prescription Drug Monitoring Program FY 2011 Competitive Grant Announcement, U.S. Department of Justice, OMB No. 1121-0329, *available at* http://www.ojp.usdoj.gov/BJA/grant/11PDMPsol.pdf; National All Schedules Prescription Electronic Reporting Act (NASPER) of 2005 Program Grants, U.S. Department of Health and Human Services, *available at* http://www.pmpalliance.org/pdf/FY-2011-NASPER-RFA.pdf.

substances, sharing data with other states and the federal government, and ensuring patient privacy.[17] These programs also do not provide 100% of the funds necessary to plan, implement, and maintain prescription monitoring programs.[18]

The beginning of the 2011 legislative session looked hopeful for prescription monitoring legislation in Georgia with bills introduced in both chambers.[19] Even the director of the White House Office of National Drug Control Policy—"the White House Drug Czar"—expressed his support for Georgia's efforts.[20] Simultaneously, however, controversy arose surrounding Florida's prescription drug monitoring program.[21] Florida's Governor Rick Scott is opposed to the database because he believes it is an invasion of privacy and puts taxpayers "on the hook" for a program that was not supposed to require state funding. [22] Despite the controversy in Florida, the Georgia General Assembly passed SB 36, authorizing the creation of a prescription monitoring database.

Bill Tracking of SB 36

Consideration and Passage by the Senate

Senators Buddy Carter (R-1st), Renee Unterman (R-45th), Greg Goggans (R-7th), William Ligon, Jr. (R-3rd), and Charlie Bethel (R-54th) sponsored SB 36.[23] The Senate read the bill for the first time on

17. "To be eligible for a NASPER grant, state programs must track drugs that fall under schedules II, III, and IV of the Controlled Substances Act, and must adhere to certain privacy, reporting, and interoperability requirements." Digest for HR 5710, 111th Congress, 2d Sess. (U.S. 2010), *available at* http://www.gop.gov/bill/111/2/hr5710.

18. Harold Rogers funding provides up to $50,000 for planning programs and up to $400,000 for implementation or enhancement of programs. *See* Harold Rogers Prescription Drug Monitoring Program FY 2011 Competitive Grant Announcement, *supra* note 16. NASPER awards $21,593–$112,398 to states with compliant prescription monitoring programs. *See* National All Schedules Prescription Electronic Reporting Act (NASPER) of 2005 Program Grants, *supra* note 16.

19. *See* HB 184, as introduced, 2011 Ga. Gen. Assem.; SB 36, as introduced, 2011 Ga. Gen. Assem.

20. Gil Kerlikowske, director of the White House Office of National Drug Control Policy, pointed out that Florida's crackdown will force pill mills to look elsewhere, like neighboring Georgia. Carrie Teegardin, *Database Could Flag Drug Abusers*, ATLANTA J.-CONST., Feb. 18, 2011, at B1.

21. Janet Zink, *Fight is on to Save Drug Monitoring Database*, MIAMI HERALD, Mar. 14, 2011, at A3, *available at* http://www.miamiherald.com/2011/03/14/2115149/fight-is-on-to-save-drug-monitoring.html.

22. *Id.*

23. SB 36, as introduced, 2011 Ga. Gen. Assem.

February 1, 2011.[24] Lieutenant Govenor Casey Cagle (R) assigned it to the Health and Human Services Committee.[25]

The bill, as originally introduced, provided "for the establishment of a program to monitor the prescribing and dispensing of Schedule II, III, IV, and V controlled substances."[26] The bill modified the definitions listed in Code section 16-13-21 by adding definitions of "addiction,"[27] "board,"[28] "patient,"[29] "prescriber,"[30] "Schedule II, III, IV, or V controlled substances,"[31] and "tolerance"[32] and altering the definitions of "bureau,"[33] "dependency,"[34] and "dispenser."[35] The bill also required dispensers to submit thirteen specific pieces of information regarding the dispensing of such controlled substances,[36] provided for the confidentiality of information in the database except for specific circumstances, and provided for penalties for misuse of the data.[37] The bill also established an Electronic Database Review Advisory Committee (Advisory Committee).[38] The Advisory Committee and other privacy protections such as the penalties for misuse of the data were included in the bill to address the privacy concerns that had prevented the bill from being passed the previous two years.[39]

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24. State of Georgia Final Composite Status Sheet, SB 36, May 24, 2011.
25. *Id.*
26. SB 36, as introduced, p. 1, ln. 2–3, 2011 Ga. Gen. Assem.
27. *Id.* at p. 1, ln. 18–23.
28. *Id.* at p. 2, ln. 34–35.
29. *Id.* at p. 5, ln. 156–57.
30. *Id.* at p. 6, ln. 183–86.
31. *Id.* at p. 6, ln. 191–94.
32. SB 36, as introduced, p. 6, ln. 198–201, 2011 Ga. Gen. Assem.
33. *Id.* at p. 2, ln. 36–37 (changing the definition from "Drug Enforcement Administration, United States Department of Justice, or its successor agency," to "Georgia Bureau of Investigation").
34. SB 36, as introduced, p. 2–3, ln. 61–71, 2011 Ga. Gen. Assem.
35. *Id.* at p. 3, ln. 79–93.
36. *Id.* at p. 8, ln. 240–59 (including the DEA permit number or dispenser identification number, the date the prescription was dispensed, the prescription serial number, if the prescription is new or a refill, the National Drug Code for the dispensed drug, the quantity and strength dispensed, the number of days supply of the drug, the patient's name, the patient's address, the patient's date of birth, the approved prescriber identification number or the prescriber's DEA permit number, the date the prescription was issued by the prescriber, and "other data elements consistent with standards established by the American Society for Automation in Pharmacy, if designated by regulations of the board").
37. *Id.* at p. 1, ln. 3–9.
38. *Id.* at p. 1, ln. 6–8.
39. Carter Interview, *supra* note 1.

The Health and Human Services Committee offered a substitute to SB 36.[40] The substitute revised Code section 16-13-21 to define a "dispenser" as a person that *dispenses* Schedule II, III, IV, or V controlled substances instead of one that *delivers* such controlled substances.[41] The substitute also changed Code section 16-13-21 to include clinics as a health care facility not covered under the definition of "dispenser" and expanded the type of care institutional pharmacies not considered "dispensers" provide from "inpatient" to "patient."[42] The Committee substitute also removed language in Code section 16-13-58 that would have allowed the State Board of Pharmacy (Pharmacy Board) to fund grants to dispensers to cover costs for dedicated equipment and software used to comply with the reporting requirements from "funds from the disposition of forfeited property."[43]

Under Code section 16-13-60, the Committee substitute modified to whom the Pharmacy Board will be authorized to provide prescription information from the database.[44] The substitute allowed for the Pharmacy Board to provide information to officials "upon receipt of a subpoena issued by a court of record, located within or outside of this state" instead of by a "superior court in compliance with Georgia law and the Georgia Constitution."[45] The substitute also allowed for a state agency or board to receive prescription information only from a "subpoena issued by a superior court" instead of from "an administrative subpoena issued by such state agency, board, or entity which is authorized to receive such prescription information."[46] The Committee substitute also added a provision to Code section 16-13-60 to make clear that this bill would not prevent the Georgia Composite Medical Board (Medical Board) or other licensing board from being able to obtain patient medical

40. SB 36 (SCS), 2011 Ga. Gen. Assem.
41. *Id.* § 1, p. 3, ln. 79.
42. *Id.* § 1, p. 3, ln. 84–85.
43. *Id.* § 2, p. 7, ln. 233.
44. *Compare Id.* § 2, p. 9, ln. 308–09, *with* SB 36, as introduced, § 2, p. 9, ln. 306–07, 2011 Ga. Gen. Assem.
45. SB 36 (SCS), § 2, p. 9, ln. 308–09, 2011 Ga. Gen. Assem.
46. *Compare Id.* § 2, p. 9, ln. 311, *with* SB 36, as introduced, § 2, p. 9, ln. 308–10, 2011 Ga. Gen. Assem.

information from a practitioner solely on the basis that the practitioner had placed prescription information in the database.[47]

The Committee substitute established a time frame for implementation of the database in Code section 16-13-64 by requiring the Pharmacy Board to certify when the database is established and to post a notice of the certification on the its website.[48] Dispensers would then have 30 days to begin submitting prescription information to the Pharmacy Board.[49]

The Health and Human Services Committee favorably reported its substitute on February 17, 2011, and the bill was read on the Senate floor for the second time on February 22, 2011.[50] The bill was then read for the third time on February 23, 2011,[51] and the Senate passed the Committee substitute of SB 36 by a vote of 49 to 6 on the same day.[52]

Consideration and Passage by the House

The bill was first introduced to the House on February 24, 2011.[53] The bill was read for the second time on February 28, 2011.[54] Speaker of the House David Ralston (R-7th) assigned it to the House Committee on Judiciary Non-Civil.[55]

The House Committee on Judiciary Non-Civil offered a House Committee substitute that made several changes to the version that the Senate passed.[56] The Committee substitute changed the definition of "security paper," required that all hard copy prescriptions be on security paper, required identification to pick up certain prescriptions, and limited the units of Schedule II through IV drugs which may be obtained with the use of a single prescription to sixty units.[57]

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47. SB 36 (SCS), § 2, p. 10, ln. 335, 2011 Ga. Gen. Assem.
48. *Id.* § 2, p. 11, ln. 385.
49. *Id.* § 2, p. 11, ln. 387.
50. State of Georgia Final Composite Status Sheet, SB 36, May 24, 2011.
51. *Id*.
52. Georgia State Senate Voting Record, SB 36 (Feb. 23, 2011).
53. Video Recording of House Proceedings, Feb. 24, 2011 at 19 min., 14 sec. (remarks by Speaker of the House David Ralston (R-7th), http://mediam1.gpb.org/ga/leg/2011/ga-leg-house_022411_AM.wmv [hereinafter House First Reader Video].
54. State of Georgia Final Composite Status Sheet, SB 36, May 24, 2011.
55. *Id.*
56. SB 36 (HCS), 2011 Ga. Gen. Assem.
57. *Compare* SB 36 (HCS), p. 1, ln. 11–16, 2011 Ga. Gen. Assem. *with* SB 36, as passed Senate,

In the House Committee on Judiciary Non-Civil hearing, Representative Ed Setzler (R-35th) summarized the reasons for the amendments.[58] First, there was a concern that privacy was not being adequately protected.[59] Also, some of the amendments were made to "clean up language where administrative subpoenas perhaps were a little looser in the bill's language . . . than they should have been," and other amendments were made to restrict the ability of other states to access the database.[60] The subcommittee also proposed amendments that would have changed the drugs tracked by the database to Schedule II drugs along with an enumerated list as opposed to the original Schedule II, III, IV, and V drugs.[61] These amendments were later overridden by a Committee hearing amendment which, limited coverage to Schedule II, III, IV, and V drugs.[62]

The subcommittee also introduced an amendment to change the requirements of any entity that has access to the database to have "security measures that are substantially equivalent" to those of the Pharmacy Board.[63] This was meant to provide more security than the Senate bill's requirement that the entity "maintain security procedures consistent with the size and sophistication of the organization."[64] Representative Setzler (R-35th) recognized that, "as a powerful thing, [this bill] has to be adequately shackled."[65]

The substitute as recommended by the House Committee on Judiciary Non-Civil made several other changes to the bill passed by the Senate. It added a definition of "agency" to the definitions in Code section 16-13-21 and defined it to mean the Georgia Drugs and Narcotics Agency.[66] The Committee substitute also amended Code section 16-13-59 to refer to the "agency" instead of the "board," thus

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p.1, ln. 1–10, 2011 Ga. Gen. Assem.

58. House Committee Video, *supra* note 5 at 14 min., 48 sec. (remarks by Rep. Ed Setzler (R-35th)).

59. *Id.*

60. *Id.*

61. House Committee Video, *supra* note 5, at 18 min., 58 sec. (remarks by Rep. Ed Setzler (R-35th)).

62. *Id.* at 52 min., 28 sec. (remarks by Rep. Edward Lindsey (R-54th)) (Rep. Lindsey offering his amendment).

63. *Id.* at 18 min., 58 sec. (remarks by Rep. Ed Setzler (R-35th)).

64. *Id.*

65. *Id.*

66. SB 36 (HCS), § 1, p. 2, ln. 37, 2011 Ga. Gen. Assem.

requiring dispensers to send information regarding each prescription filled to the Georgia Drugs and Narcotics Agency (Agency) instead of the Board.[67] The Committee substitute also changed the definition of a "dispenser" to one that delivers a drug instead of one that dispenses, going back to the definition in the bill as originally introduced.[68] Also in the definitions section, "veterinarian" was removed from the definition of a "practitioner."[69] To further prevent other states and the federal government from accessing the database, the Committee extended the reach of new Code section 16-13-58(a) to prohibit "the board, agency, [or] any other state entity" from accepting "a grant that requires as a condition of the grant any sharing of information that is inconsistent with this part."[70] The Committee also modified Code section 16-13-58 by adding back in the ability for the Agency to provide funds from the disposition of forfeited property to dispensers for covering the costs of equipment and software.[71] The Committee also added in two more pieces of information dispensers would need to submit to the Agency for each prescription purchase—the gender of the patient and the method of payment.[72]

To further protect the privacy of the data, the Committee changed the amount of time that the Agency could keep the identifying prescription information in the electronic database from two years to one year.[73] The Committee expanded the coverage of the bill by adding in Code section 16-13-59(g), which would require wholesalers to provide the Agency with the amounts of Schedule II, III, IV, and V controlled substances that it ships to each dispenser in the state.[74] However, the Committee also added Code section 16-13-65(b), which made clear that this bill would not cover over-the-counter Schedule V controlled substances.[75] The Committee substitute also limited those with whom the Agency could provide

67. *Id.* § 2, p. 9, ln. 278–309.
68. *Id.* § 1, p. 3, ln. 88.
69. *Id.* § 1, p. 6, ln. 176.
70. *Id.* § 2, p. 7–8, ln. 239–44.
71. *Id.* § 2, p. 8, ln. 248–49.
72. SB 36 (HCS), § 2, p. 8, ln. 272–73, 2011 Ga. Gen. Assem.
73. *Id.* § 2, p. 9, ln. 296–300.
74. *Id.* § 2, p. 9, ln. 305–09.
75. *Id.* § 2, p. 13, ln. 432–34.

information from the database. Besides dispensers, patients, and prescribers, the Agency would be allowed to provide database information to local, state, or federal law enforcement pursuant to a search warrant and to the Agency or Medical Board upon the issuance of an administrative subpoena issued by a Georgia state administrative law judge.[76] Further protecting the privacy of Georgia prescription drug purchasers, the bill also removed the provision in the Senate's version of the bill that would allow the Pharmacy Board to prepare a plan to share database information with other states.[77]

One concern of the bill's sponsor, Senator Buddy Carter (R-1st), was to make sure the patients that truly need medication can still get it.[78] To address this concern, the Committee amended the bill to expand Code section 16-13-62 to make clear that nothing in the bill should "impede, impair, or limit a prescriber from prescribing pain medication in accordance with the pain management guidelines developed and adopted by the Georgia Composite Medical Board."[79] Other changes included removing the requirement of posting the certification of the database on the Pharmacy Board's website and the requirement that dispensers begin to submit prescription information within thirty days of such posting.[80]

To protect the privacy of Georgia residents' data, the Committee substitute provided even harsher penalties for abuse of the database and the information contained within.[81] Additionally, amendments to Code section 16-13-64 increased the punishment for a dispenser knowingly and intentionally failing to submit prescription information to the database from a misdemeanor to a felony and increased the possible prison time to not less than one year and the fine limit to $50,000.[82] The substitute extended prison time to at least one year for database breaches by both persons authorized to access

76. *Id.* § 2, p. 10, ln. 329–32.

77. *Compare* SB 36, as passed Senate, § 2, p. 10, ln. 319–22, 2011 Ga. Gen. Assem., *with* SB 36 (HCS), § 2, p. 13, ln. 333–40, 2011 Ga. Gen. Assem. (removing O.C.G.A. § 11-12-13(e)).

78. House Committee Video, *supra* note 5, at 26 min., 06 sec. (remarks by Sen. Buddy Carter (R-1st)).

79. SB 36 (HCS), § 2, p. 12, ln. 385–87, 2011 Ga. Gen. Assembly.

80. *Compare* SB 36, as passed Senate, § 2, p. 12–13, ln. 385–388, 2011 Ga. Gen. Assem., *with* SB 36 (HCS), § 2, p. 12, ln. 396–402, 2011 Ga. Gen. Assem. (removing proposed O.C.G.A. § 16-13-64(a)).

81. House Committee Video, *supra* note 5, at 12 min., 55 sec. (remarks by Sen. Buddy Carter (R-1st)).

82. SB 36 (HCS), § 2, p. 12, ln. 396–402, 2011 Ga. Gen. Assem.

the database and anyone who obtains, attempts to obtain, or discloses database information under false pretenses.[83] Anyone who would use the information in the database for commercial advantage, personal gain, or malicious harm would be punished by a prison term of not less than two years.[84]

To further reign in the influx of drug seekers from other states and the rise of pill mills in Georgia, the Committee substitute made changes to how prescriptions are written. First, it added sections 3, 4, and 5, which defined what security paper could be used for prescriptions[85] and would require all hard copy prescriptions to be written on security paper.[86] Second, the Committee substitute added Code section 26-4-80.2, which prevents pharmacists from filling prescriptions for more than sixty units of any drug in Schedules II, III, or IV.[87]

With these changes, the House Committee on Judiciary Non-Civil favorably reported the Committee substitute on March 28, 2011.[88] The bill was postponed on March 30, 2011, but then read for the third time and debated on March 31, 2011.[89] Despite concerns about privacy and funding voiced by opponents of the bill during the House floor debate, the bill passed the House by a vote of 117 to 45 on March 31, 2011.[90] The bill was then sent back to the Senate to resolve the differences between the House and Senate versions of the bill.[91]

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83. *Id.* § 2, p. 12, ln. 410–18.

84. *Id.* § 2, p. 13, ln. 419–23.

85. *Id.* § 2, p. 13, ln. 439–55 (defining "security paper" as "a prescription pad or paper that has been approved by the board for use and contains the following characteristics: (A) One or more industry recognized features designed to prevent unauthorized copying of a completed or blank prescription form; (B) One or more industry recognized features designed to prevent the erasure or modification of information written on the prescription form by the practitioner; and (C) One or more industry recognized features designed to prevent the use of counterfeit prescription forms").

86. *Id.* § 2–5.

87. *Id.* § 5, p. 15, ln. 502–05.

88. State of Georgia Final Composite Status Sheet, SB 36, May 24, 2011.

89. *Id.*

90. Georgia House of Representatives Voting Record, SB 36 (Mar. 31, 2011).

91. State of Georgia Final Composite Status Sheet, SB 36, May 24, 2011.

Senate Amendment

The Senate took up the changes made by the House on April 14, 2011.[92] Senator Carter offered a floor amendment to the House Committee substitute.[93] The amendment removed the definition of "Wholesalers"[94] and the wholesalers' requirement to report the quantity of Schedule II, III, IV, and V controlled substances shipped to dispensers from the House version of the bill.[95] The amendment added the consumer member that the Governor appoints to the Pharmacy Board pursuant to Code section 26-4-21 as the tenth member to the Advisory Committee.[96] The amendment also removed the requirement that pharmacists copy the identification document of persons picking up prescriptions for other people.[97] Senator Carter's amendment also limited the requirement for security paper for prescriptions to Schedule II controlled substances.[98] The amendment also removed the sixty unit limit on prescriptions pharmacists filling Schedule II through IV controlled substances.[99]

The Senate agreed with the House Committee substitute as amended by the Senate by a vote of 53–3, and the House agreed to Senate's changes 131–32 on April 14, 2011.[100] The Senate then sent the bill to the Governor on April 19, 2011.[101] Governor Nathan Deal signed the bill into law on May 13, 2011.[102]

The Act

The Act amends Title 16 of the Official Code of Georgia Annotated with the purpose of reducing the abuse of controlled

92. *Id.*
93. SB 36 (SFA), 2011 Ga. Gen. Assem.
94. *Id.* at p. 1, ln. 8.
95. *Id.* at p. 1, ln. 9.
96. *Id.* at p. 1, ln. 17–23.
97. *Id.* at p. 1–2, ln. 24–27.
98. *Id.* at p. 2, ln. 28–29.
99. SB 36 (SFA), p. 2, ln. 31, 2011 Ga. Gen. Assem.
100. Georgia Senate Voting Record, SB 36 (Apr. 14, 2011); Georgia House of Representatives Voting Record, SB 36 (Apr. 14, 2011); State of Georgia Final Composite Status Sheet, SB 36, May 24, 2011.
101. *Id.*
102. Office of the Governor, *May 13, 2011: Bills Signed by Governor Deal*, http://gov.georgia.gov/00/article/0,2086,165937316_170511855_171299722,00.html.

substances and thereby improving the quality of healthcare. The Act defines numerous terms by amending Code section 16-13-21.[103] This section adds definitions of "addiction," "patient," "prescriber," "schedule II, III, IV, or V controlled substance," and "tolerance."[104] It also defines "agency" as the Georgia Drugs and Narcotics Agency, "board" as the State Board of Pharmacy, and amends "bureau" to mean the Georgia Bureau of Investigation.[105] This section amends the definition of "dependent" and "dispenser."[106] "Dispenser" was amended to exclude hospital pharmacies, institutional pharmacies, direct administration of the controlled substance, and prison pharmacies.[107]

Section 2 of the Act establishes the prescription monitoring database, provides for its security, and sets out the penalties for breaching such security.[108] First, it amends the chapter by adding Part 2 and designating Article 2 as Part 1 of Article 2.[109] It adds Code section 16-13-57, which requires the Agency to establish and maintain "a program to electronically record into an electronic database prescription information" related to Schedule II, III, IV, or V controlled substances subject to funding either by the State or as otherwise available.[110] This section also clarifies that the purpose of the Act is to reduce the abuse of controlled substances and to improve quality of care by promoting appropriate prescribing practices.[111] It authorizes the Agency to administer the program at the direction and oversight of the Pharmacy Board.[112]

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103. O.C.G.A. § 16-13-21 (Supp. 2011).

104. *Id.*

105. "Bureau" was amended from the Drug Enforcement Administration, United States Department of Justice. *Compare* O.C.G.A. § 16-13-21 (Supp. 2010) *with* O.C.G.A. § 16-13-21 (Supp. 2011).

106. O.C.G.A. § 16-13-21 (Supp. 2011).

107. An "institutional pharmacy" includes a nursing home, intermediate care home, personal care home, or a hospice program, which provides care and administers the controlled substance "on the premises of the facility." O.C.G.A. § 16-13-21(10)(B) (Supp. 2011). "Administer" means the "direct application of a controlled substance." O.C.G.A. § 16-13-21(1) (Supp. 2011).

108. O.C.G.A. § 16-13-57 to -65.

109. *Id.*

110. The General Assembly did not appropriate the $400,000–$1.2 million to the Georgia Drugs and Narcotics Agency to establish the database in the budget. Hunt, *supra* note 1. However, the section allows the agency to seek other sources, such as federal or private funds. O.C.G.A. § 16-13-57(a) (Supp. 2011). *See also supra* text accompanying notes 15–18 and *infra* text accompanying notes 174–88.

111. Appropriate prescribing practices include "proper use of medications to treat pain and terminal illness," overprescribing, and duplicative prescribing. O.C.G.A. § 16-13-57(a) (Supp. 2011).

112. O.C.G.A. § 16-13-57(b) (Supp. 2011).

Section 2 also adds Code section 16-13-58, which authorizes the Agency to apply for funding and accept gifts in order to develop and maintain the prescription monitoring database, so long as the conditions of the funding do not require information sharing that is inconsistent with this part.[113] Code section 16-13-58 also grants the Agency authority to provide funds to individual dispensers for the purpose of compliance with this section.[114] This section also makes clear that no appropriation of state funds is required.[115]

The Act adds Code section 16-13-59, which establishes the information that each dispenser must submit to the Agency for any Schedule II, III, IV, or V controlled substance.[116] The required information includes at a minimum: Drug Enforcement Agency (DEA) permit or dispenser facility controlled substance identification number, date the prescription was dispensed, prescription serial number, if the prescription is new or a refill, National Drug Code for drug dispensed, quantity and strength dispensed, number of days supply of the drug, patient's name, address, date of birth, gender, method of payment, date the prescription was issued by the prescriber, and other data consistent with standards established by the American Society for Automation in Pharmacy.[117] Dispensers are required to submit the required prescription information on at least a weekly basis and at a minimum no later than ten days after the prescription is dispensed.[118] This Code section also requires that dispensers that are temporarily unable to comply with the submission rules notify the Pharmacy Board and the Agency.[119] Additionally, the Agency may issue a waiver to any dispenser that is unable to comply with the reporting requirements.[120] Code section 16-13-59 prohibits the Agency from revising the required information more frequently than annually and any such changes are effective and applicable to

113. O.C.G.A. § 16-13-58 (Supp. 2011).
114. It is likely that this clause was required for passage due to limited funds in the budget. O.C.G.A. § 16-13-58(b) (Supp. 2011).
115. O.C.G.A. § 16-13-58(c) (Supp. 2011).
116. O.C.G.A. § 16-13-59(a) (Supp. 2011).
117. O.C.G.A. § 16-13-59(a)(1)-(15) (Supp. 2011).
118. O.C.G.A. § 16-13-59(b) (Supp. 2011).
119. *Id.*
120. The waiver request must be in writing when submitted to the agency. The waiver may permit a dispenser to submit the required prescription information by paper form or other means, so long as all of the required information is included. O.C.G.A. § 16-13-59(c) (Supp. 2011).

dispensers six months after they are adopted.[121] The Agency is prohibited from accessing or allowing access to any identifying prescription information in the electronic database after one year from its inclusion in the database.[122] Additionally, the Agency is required to promulgate rules and procedures that will "ensure that any identifying information the agency receives from any dispenser or reporting entity that is one year old or older is deleted or destroyed on an ongoing basis in a timely and secure manner."[123]

Section 2 of the Act adds Code section 16-13-60, which first establishes that the prescription information submitted pursuant to Code section 16-13-59 is confidential and exempt from open records requirements.[124] It further requires that the Agency and the Pharmacy Board "establish and maintain strict procedures to ensure that the privacy and confidentiality of patients, prescribers, and patient and prescriber information collected, recorded, transmitted, and maintained pursuant to this part are protected."[125] The permitted disclosures are limited to: (1) authorized prescribers or dispensers of controlled substances for the purpose of providing care to a specific patient, (2) upon request by a patient, prescriber or dispenser where the information concerns the requestor, (3) to local, state, or federal law enforcement or prosecutorial officials pursuant to a search warrant, and (4) to the Medical Board pursuant to an administrative subpoena.[126] It prohibits disclosure to any person or entity not specified and only in accordance with HIPAA standards.[127]

Code section 16-13-60 allows the disclosure of de-identified prescription information to governmental entities for statistical research, educational, or grant application purposes.[128] It also

121. O.C.G.A. § 16-13-59(d) (Supp. 2011).

122. O.C.G.A. § 16-13-59(e) (Supp. 2011).

123. *Id.*

124. O.C.G.A. § 16-13-60(a) (Supp. 2011); Open records laws allow interested individuals, firms, corporations, or other entities to inspect, extract, or make copies of any public record. O.C.G.A. § 50-18-70.

125. O.C.G.A. § 16-13-60(b) (Supp. 2011).

126. O.C.G.A. § 16-13-60(c) (Supp. 2011).

127. O.C.G.A. § 16-13-60(b) (Supp. 2011). The Health Insurance Portability and Accountability Act (HIPAA) of 1996 prohibits disclosure of protected health information except under limited circumstances. 42 U.S.C.A. § 102 (1996).

128. The disclosed prescription information must be stripped of information that "could be used to identify prescribers or individual patients or persons who received prescriptions from dispensers. O.C.G.A. § 16-13-60(d) (Supp. 2011).

prohibits any person or entity permitted to receive prescription information from subsequently providing that information to any other person or entity unless required by court order.[129] This section requires any permissible user who directly accesses the prescription information contained in the database to implement and maintain a "comprehensive information security program" that includes security measures equal to those of the Agency.[130] Finally, the Act does not modify, limit, diminish, or impliedly repeal any authority of a licensing or regulatory board, or other entity authorized to obtain prescription information from other sources, provided that the Agency may release information only in accordance with this section.[131]

Code section 16-13-61 creates an Electronic Database Review Advisory Committee (Advisory Committee) to consult with and advise the Agency on the establishment, maintenance, and operation of the electronic prescription database.[132] The Advisory Committee will consist of ten uncompensated members each serving a three-year term, with five members constituting a quorum.[133] It will meet at least once per year or by request of the chairperson or at least three members.[134]

Section 2 adds Code section 16-13-62, which requires the Agency to establish rules and regulations in order to implement the Act.[135] Simultaneously, it prohibits the Agency from establishing policies, rules, or regulations that limit, revise, or expand the prescription or

129. O.C.G.A. § 16-13-60(e) (Supp. 2011).

130. The comprehensive information security program must include administrative, technical, and physical safeguards and the user must identify "foreseeable internal and external risks to the security, confidentiality, and integrity of the personal information that could result in the unauthorized disclosure, misuse, or other compromise of the information." O.C.G.A. § 16-13-60(f) (Supp. 2011).

131. O.C.G.A. § 16-13-60(g) (Supp. 2011).

132. The committee will: review methods of data collection, access, and security, evaluate data to "identify benefits and outcomes of the reviews," and communicate with prescribers and dispensers about the reviews and database use. O.C.G.A. § 16-13-61(a) (Supp. 2011).

133. The committee must include one representative each, from the Georgia Drugs and Narcotics Agency, the Georgia Composite Board of Medicine, the Georgia Board of Dentistry, and the Georgia Board of Optometry. It must also include an expert in personal privacy matters appointed by the State Bar of Georgia and an addiction professional, a pain management specialist, an oncologist, and a hospice representative, each appointed by the Georgia Composite Medical Board. The tenth member of the committee must be a consumer member appointed by the Governor to the State Board of Pharmacy under Code section 26-4-21. O.C.G.A. § 16-13-61 (Supp. 2011).

134. O.C.G.A. § 16-13-61 (Supp. 2011).

135. O.C.G.A. § 16-13-62 (Supp. 2011).

dispensing authority of any prescribers or dispensers subject to this part, including the authority to prescribe pain medication in accordance with the Medical Board's pain management guidelines.[136]

Code section 16-13-63 was added to limit the liability of a prescriber or dispenser, stating that they have no duty to obtain prescription information about a patient and shall not be held civilly liable or criminally responsible for damages or injury based on a failure to obtain prescription information from the database.[137]

Section 2 adds Code section 16-13-64, which sets out penalties for failure to submit prescription information to the database and improper disclosure of information contained in the database.[138] First, a dispenser who knowingly and intentionally fails to submit or submits incorrect prescription information is guilty of a felony and faces not less than one year nor more than five years imprisonment and a fine not to exceed $50,000 for each offense.[139] Additionally, the offense is reported to the dispenser's licensing board.[140] Second, an individual permitted to access prescription information contained in the database who negligently uses, releases, or discloses information in violation of this part is guilty of a misdemeanor for the first offense and a felony for the second offense, subject to imprisonment for not less than one year and not more than three years and a fine not to exceed $5,000.[141] Third, an individual permitted to access prescription information contained in the database who knowingly obtains or discloses information in violation of this part is guilty of a felony and faces punishment of not less than one year but not more than five years imprisonment and a $50,000 fine.[142]

Under new Code section 16-13-64, any person who knowingly obtains or discloses prescription information under false pretenses is guilty of a felony, punishable by imprisonment for not less than one year and not more than five years and a fine of $100,000.[143] Any

136. *Id.*
137. O.C.G.A. § 16-13-63 (Supp. 2011).
138. O.C.G.A. § 16-13-64 (Supp. 2011).
139. O.C.G.A. § 16-13-64(a) (Supp. 2011).
140. *Id.*
141. O.C.G.A. § 16-13-64(b) (Supp. 2011).
142. O.C.G.A. § 16-13-64(c)(1) (Supp. 2011).
143. O.C.G.A. § 16-13-64(c)(2) (Supp. 2011).

unauthorized person who obtains or discloses prescription information with the intent to sell, transfer, or use the information for commercial or personal gain or malicious harm is guilty of a felony and faces not less than two years and not more than ten years imprisonment and a fine not to exceed $250,000.[144] This section continues to provide a cause of action for actual damages, punitive damages where appropriate, attorney fees, and litigation expenses to any person injured by reason of a violation of this part.[145] All penalties in Code section 16-13-64 are intended to be cumulative of other applicable penalties and and this section does not repeal alternative penalties.[146]

New Code section 16-13-65 exempts veterinarians from the provisions of this part and makes this part inapplicable to "any drug, substance, or immediate precursor classified as an exempt over-the-counter Schedule V controlled substance pursuant to this chapter or pursuant to Pharmacy Board rules established in accordance with Code section 16-13-29.2."[147]

Section 3 of the Act amends Chapter 4 of Title 26 of the Official Code of Georgia Annotated by revising paragraph (38.5) of Code section 26-4-5, redefining "security paper" to mean an approved prescription pad or paper that contains industry recognized features designed to prevent unauthorized copying, erasure or modification of information written on the paper, and counterfeit use.[148] It also requires that any pad of security paper bears an identifying lot number and that each page is numbered sequentially beginning with the number one.[149]

Section 4 further amends Code section 26-4-80 by requiring any person picking up a Schedule II controlled substance to present photo identification that displays the person's full name.[150]

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144. O.C.G.A. § 16-13-64(c)(3) (Supp. 2011).
145. O.C.G.A. § 16-13-64(d) (Supp. 2011).
146. O.C.G.A. § 16-13-64(e) (Supp. 2011).
147. O.C.G.A. § 16-13-65 (Supp. 2011). Code section 16-13-29.2 grants the Board of Pharmacy authority to exempt and control the sale of Schedule V controlled substances without requiring a prescription. O.C.G.A. § 16-13-29.2 (2010).
148. O.C.G.A. § 26-4-5(38.5) (Supp. 2011).
149. *Id.*
150. O.C.G.A. § 26-4-80(1) (Supp. 2011).

Section 5 of the Act adds Code section 26-4-80.1, which requires that every hard copy prescription for any Schedule II controlled substance be written on security paper.[151] It prohibits a pharmacist from filling a hard copy prescription for any Schedule II controlled substance unless it is on security paper. This rule does not apply in an emergency, however.[152] The section requires that a hard copy of an electronic Schedule II controlled substance prescription drug order given directly to the patient be manually signed and on security paper approved under Code section 26-4-5.[153] Prescribers must implement proper safeguards to prevent theft or unauthorized use of security paper and report any theft or unauthorized use to appropriate authorities.[154] This section also requires vendors to get approval by the Pharmacy Board for their security paper prior to sale or marketing in Georgia.[155] The Pharmacy Board also must create a seal of approval confirming that security paper contains the required industry recognized characteristics listed in paragraph (38.5) of Code section 26-4-5 and the seal must be affixed to all security paper used in Georgia.[156] The Pharmacy Board is permitted to adopt rules necessary to administer this Code section.[157] Finally, this Code section does not apply to prescriptions transmitted to the pharmacy through facsimile, telephone, or electronic means, nor for prescriptions written for hospital inpatients or outpatients, nursing home residents, mental health facility inpatients or residents, or prisoners incarcerated in a local, state, or federal correctional facility, when the prescription is written into the patient's medical record, the order is given to the pharmacy directly, and the patient has no opportunity to handle the written order.[158]

151. This provision is effective October 11, 2011. O.C.G.A. § 26-4-80.1(a) (Supp. 2011).
152. O.C.G.A. § 26-4-80.1(b) (Supp. 2011).
153. O.C.G.A. § 26-4-80.1(c) (Supp. 2011).
154. O.C.G.A. § 26-4-80.1(d) (Supp. 2011).
155. O.C.G.A. § 26-4-80.1(e) (Supp. 2011).
156. O.C.G.A. § 26-4-80.1(f) (Supp. 2011).
157. O.C.G.A. § 26-4-80.1(g) (Supp. 2011).
158. O.C.G.A. § 26-4-80.1(h) (Supp. 2011).

Analysis

Two significant areas of contention during the drafting of the Act were privacy and funding.[159] The two issues are intertwined, as the Act's strict privacy protections were necessary to ensure its passage, yet may preclude available federal funding grants. Because the General Assembly did not allocate the funds needed to create the database, outside sources are the only available means to fund the project.[160] The Act, however, may not meet federal grant requirements due to the privacy restrictions, so limited funding options are available and may ultimately prevent creation of the database.[161]

Privacy

Privacy remains an issue for the Act going forward, despite proponents' efforts to address the concerns during the legislative process.[162] The Act aims to protect privacy in three ways: regulating who can access the data; creating an Advisory Committee to manage the database's security; and providing substantial penalties for violating the access protocols of the database information.

First, the Act limits who has access to the data.[163] It permits disclosure of patient prescription information only to authorized prescribers or dispensers for providing care to a specific patient, upon request by a patient, prescriber, or dispenser about whom the information concerns, to law enforcement with a search warrant, or to the Agency or Medical Board with an administrative subpoena.[164] The Act does not permit sharing of patient prescription information with other states or the Federal government except with a subpoena.[165] Although passage of the Act was contingent on the

159. *See* Carter Interview *supra* note 1.
160. *See* Hunt, *supra* note 1.
161. *Id.*
162. *See* Carter Interview *supra* note 1; House Committee Video, *supra* note 5, at 14 min., 48 sec. (remarks by Rep. Ed Setzler (R-35th)).
163. O.C.G.A. § 16-13-60(c) (Supp. 2011).
164. *Id.*
165. Hunt, *supra* note 1.

inclusion of these strict privacy provisions, the provisions also limit available sources of funding.[166]

The second privacy concern raised during the development of the Act was that of security breaches that might reveal database information to unauthorized third parties.[167] As Representative Christian Coomer (R-14th) noted, the Act "creates a very target-rich environment for bad actors to try to go and steal that information."[168] Representative Coomer also cited recent data breaches of the Sony Corporation's PlayStation user database that revealed 70 million users' sensitive data.[169] Proponents of the Act noted such security concerns,[170] and through the addition of Code section 16-13-61, the Act establishes an Advisory Committee that would monitor security and access of the database.[171] Until the Advisory Committee's regulations are in place, there is no way to determine whether the security placed on the database by the Advisory Committee's regulations will be more effective than those of Sony's breached database.

To further address security and privacy concerns, proponents of the Act added substantial penalties for those guilty of unauthorized access to the database or unauthorized dissemination of database information.[172] Classifying violations as felonies with punishments up to $250,000 in fines and up to ten years in prison should serve to deter security breaches.[173]

Funding

Although the Act establishes a prescription monitoring database, its creation, implementation, and maintenance will require a

166. *Id*; *see also* text accompanying notes 174–88.

167. House First Reader Video, *supra* note 53 at 1 hr., 52 min., 47 sec. (remarks by Rep. Christian Coomer (R-14th)), http://mediam1.gpb.org/ga/leg/2011/ga-leg-house_033111_PM2.wmv.

168. Telephone Interview with Rep. Christian Coomer (R-14th) (May 11, 2011) [hereinafter Coomer Interview] (on file with the Georgia State University Law Review).

169. *Id.*

170. House Committee Video, *supra* note 5, at 14 min., 48 sec. (remarks by Rep. Ed Setzler (R-35th)).

171. O.C.G.A. § 16-13-61 (Supp. 2011).

172. House Committee Video, *supra* note 5, at 13 min., 00 sec. (remarks by Sen. Buddy Carter (R-1st)).

173. O.C.G.A. § 16-13-64 (Supp. 2011).

significant amount of money.[174] Since the legislature did not provide state funding for the database, the Agency will have to look to federal or private funding to implement it.[175] Federal funding is available through the National All Schedules Prescription Electronic Reporting Act of 2005 (NASPER) so long as the state law meets the federal requirements.[176] In order to receive funding through NASPER, a state prescription monitoring database must require reporting of all Schedule II, III, and IV controlled substances.[177] The Act fulfills this requirement by including all Schedule II, III, IV, and V controlled substances.[178]

One goal of NASPER funding is to incentivize states to share information with each other because it is common for addicts or drug dealers to cross state lines to fill prescriptions.[179] If neighboring states do not share information with each other, law enforcement is unable to stop this practice. However, as Representative Coomer pointed out, if the Pharmacy Board receives federal funding from a grant established by NASPER, part of the requirement of doing so is opening the database up to all other states that have similar programs in place.[180] Because the Act prohibits disclosure to any unauthorized entity, which includes neighboring states without a search warrant, it is unlikely that Georgia's prescription monitoring program will qualify for the grant.[181] Furthermore, the Act prevents the Pharmacy Board, Agency, and any state entity from accepting a grant to fund the database "that requires as a condition of the grant any sharing of information that is inconsistent with this part."[182] Even if Georgia does qualify for federal aid, the deadline for 2011 grant applications

174. Estimates range from $400,000 to $1.2 million. Hunt, *supra* note 1.

175. *Id.*

176. National All Schedules Prescription Electronic Reporting Act of 2005, Pub. L. No. 109-60, 119 Stat. 1979 (2005); *See also Prescription Drug Monitoring Expands*, 38 No.1 Controlled Substance Handbook Newsletter 4, July, 2009.

177. *See Prescription Drug Monitoring Expands*, *supra* note 176.

178. O.C.G.A. § 16-13-57(a) (Supp. 2011).

179. *See Nasper Funding Assists States' Prescription Monitoring Programs*, 38 NAT'L ASS'N OF BDS. OF PHARMACY NEWSL., Aug. 2009; *Prescription Drug Monitoring Expands*, *supra* note 176.

180. Coomer Interview, *supra* note 168.

181. Hunt, *supra* note 1.

182. O.C.G.A. § 16-13-58(a) (Supp. 2011).

has passed.[183] Nevertheless, the Agency is moving ahead with its application for the federal money.[184]

Private funding may also be available.[185] In fact, the drug company that manufactures Oxycontin offered $1 million to fund Florida's prescription monitoring database.[186] Pharmaceutical companies have an incentive to aid states in setting up prescription drug monitoring programs.[187] These companies seek to keep their products on the shelves so that patients in need have access to them.[188]

Currently, it is unclear when or if Georgia's prescription drug monitoring program will be up and running. If the Agency is successful in obtaining funding, the program may be operational by 2013.[189] If not, the program may just be a great idea that never comes to life.

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183. Hunt, *supra* note 1.
184. *Id.*
185. *Id.*
186. *Id.*
187. *Id.*
188. *Id.*
189. Hunt, *supra* note 1.